schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

§ 86.408 What are the procedures for conducting a pre-hearing conference?

- (a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—
- (i) The designated Department official: or
 - (ii) The IHE.
- (2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.
- (b) A pre-hearing conference may consist of—
- (1) A conference telephone call;
- (2) An informal meeting; or
- (3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

§86.409 What are the procedures for conducting a hearing on the record?

- (a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.
- (b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—
- (1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or
- (2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.
- (c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE. Procedures to expedite may include, but are not limited to, the following:
- (1) A restriction on the number or length of submissions.
- (2) The conduct of the hearing by telephone conference call.

- (3) A review limited to the written record.
- (4) A certification by the parties to facts and legal authorities not in dispute.
- (d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.
- (2) The designated Department official has the burden of persuasion in any proceeding under this subpart.
- (3)(i) The parties may agree to exchange relevant documents and information.
- (ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.
- (4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.
- (e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—
- (1) The designated Department official: and
- (2) The IHE on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

§86.410 What are the procedures for issuance of a decision?

- (a)(1) The ALJ issues a written decision to the IHE, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—
 - (i) The last brief is filed;
- (ii) The last day of the hearing if one is held; or
- (iii) The date on which the ALJ terminates the hearing in accordance with \$86.401(c)(3).
- (2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.